

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MATTHEW WHITTEN,

Plaintiff,

vs.

CITY OF OMAHA, a political subdivision;
et. al;

Defendants.

8:15CV96

**FINDINGS, RECOMMENDATION,
AND ORDER**

On June 18, 2015, the court provided two summons forms and two USM 285 forms for Plaintiff to complete and return to the clerk for service of process on defendant John Martin in his individual and official capacities. Plaintiff did not return these forms until October 21, 2015, when he filed a “motion for summons.” (Filing No. 10).

Plaintiff filed an amended complaint on October 29, 2015. The amended complaint adds the following specifically named defendants: Sergeant Sean Sheridan #1671, and Officer Matthew Backora #1821, in their individual and official capacities. Although Plaintiff’s amended complaint also names “other unknown members of the Omaha Police Department Major Crimes Unit, individually and as Officers of the Omaha Police Department” as defendants, Whitten was previously cautioned that he must identify and serve any John Doe Defendants on or before October 16, 2015; that is, 120 days following the court’s order on initial review. (Filing No. 6, at CM/ECF p. 6). Whitten has failed to explain why he cannot specifically name all defendants at this time. And the court finds that but for Plaintiff’s own delay in serving his original complaint, Plaintiff could have obtained discovery from the City of Omaha which would reveal the names of everyone involved in the detention, search and arrest at issue in this case before the October 16, 2015 service deadline.

Accordingly, after liberally construed Plaintiff's pro se filings,

IT IS RECOMMENDED to the Honorable John M. Gerrard, United States District Judge, pursuant to [28 U.S.C. § 636\(b\)](#), that the Plaintiff's claims against John Doe defendants, named in the Amended Complaint as "other unknown members of the Omaha Police Department Major Crimes Unit, individually and as Officers of the Omaha Police Department," (see Filing No. 12), be dismissed with prejudice.

The defendant is notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

IT IS ORDERED:

1) Plaintiff's motion for summons, construed as a motion for additional time to serve defendants John Martin and the City of Omaha, (Filing No. 10), is granted. The Clerk shall process the summons and USM 285 forms attached to Plaintiff's motion (Filing No. 10), to effectuate service of Plaintiff's Amended Complaint, (Filing No. 12), upon Defendants John Martin and the City of Omaha.

2) The clerk of the court is directed to send to Whitten a copy of this order, and two summons forms and two USM 285 forms for service of process on Sergeant Sean Sheridan #1671, and on Officer Matthew Backora #1821, each in their individual and official capacities.

3) If requested to do so in this matter, the United States Marshal will serve all process in this case without prepayment of fees from Whitten. In making such a request, Whitten must complete the USM 285 forms and submit them to the clerk of the court, together with the completed summons forms. Without these documents, the United States Marshal will not serve process. Upon receipt of the completed forms, the clerk of the court will sign the summons forms and forward them to the Marshal for service on Defendants, together with copies of the Amended Complaint. In the event Whitten asks the United States Marshal to serve process, the clerk of the court will make copies of the Amended Complaint for service on Defendants.

4) Whitten is granted until December 21, 2015 to complete service of process on the newly named defendants, Sergeant Sean Sheridan #1671 and Officer Matthew Backora #1821, in their individual and official capacities. If these defendants cannot be served before December 21, 2015 due to Plaintiff's delay in returning the completed summons and USM 285 forms to the clerk's office, Plaintiff's claims against Sergeant Sean Sheridan #1671 and Officer Matthew Backora #1821 in their individual and official capacities will be subject to dismissal without further notice.

5) The clerk of the court is directed to set the following pro se case management deadline: December 21, 2015: check for completion of service on newly named defendants.

November 16, 2015

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge